

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

v.

GREGORY COLBURN, et al.,

Defendants.

Case No. 1:19-CR-10080-NMG

**AMY AND GREGORY COLBURN'S MOTION TO
APPEAR AT SENTENCING HEARING BY VIDEOCONFERENCE**

Defendants Amy Colburn and Gregory Colburn (the "Colburns"), respectfully request that the Court authorize them to appear for their upcoming Sentencing Hearing via videoconference. The government takes no position on this Motion. As grounds for this Motion, the Colburns state as follows:

1. On December 7, 2021, the Court held Rule 11 hearings for the Colburns via videoconference. The Colburns' Sentencing Hearings are scheduled for April 14, 2022.
2. On March 18, 2022, Chief Judge Saylor issued the District Court's Ninth Supplemental Concerning Video and Telephone Conferencing for Felony Pleas and Sentencing (the "General Order"). In the General Order, C.J. Saylor recognized that, due to the ongoing national emergency related to the Coronavirus Disease ("COVID-19"), "felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted in person in the District of Massachusetts without seriously jeopardizing public health and safety." Under the General Order, if defendants consent, pleas or sentencing hearings "may be conducted by video

teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available.” *See In re Coronavirus Public Emergency*, No. 22-4 (D. Mass. March 18, 2022).

3. As C.J. Saylor implicitly recognized, the COVID-19 pandemic is not over. The Centers for Disease Control (“CDC”) recently estimated that approximately one in three COVID-19 cases in the United States is caused by the new BA.2 Omicron sub-variant.¹ While overall infections are declining, the sub-variant is extremely contagious.² Indeed, just last month, in another trial related to this case, trial proceedings had to pause for a week due to the presiding judge contracting COVID-19.³

4. Individuals with underlying medical conditions are at higher risk of infection from COVID-19, which could result in hospitalization or death if they fall ill with COVID-19.⁴ The federal government recommends that individuals with underlying medical conditions limit travel or must take extra precautions if traveling is necessary.⁵

5. Consistent with prior General Orders, the Court has authorized defendants in this case to appear for sentencing hearings via videoconference. *See, e.g.*, ECF Nos. 1004 (Elizabeth Henriquez), 1401 (David Sidoo), 1439 (Manuel Henriquez), 1468 (Mossimo Gianulli), 1469 (Lori Loughlin), 1620 (Diane Blake), 1621 (Todd Blake), and 1843 (William McGlashan).

¹ *See COVID Data Tracker* (March 28, 2022), available at <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>.

² *See, e.g.*, Michael Erman and Bhanvi Satija, *A Third of U.S. COVID Now Caused by BA.2 As Overall Cases Fall*, Reuters (March 22, 2022), available at <https://www.reuters.com/world/us/omicron-sub-variant-ba2-makes-up-349-covid-variants-us-cdc-2022-03-22/>.

³ *See* Nate Raymond, “Varsity Blues’ College Scandal Trial Judge Tests Positive for COVID-19,” Reuters (March 23, 2022), available at <https://www.reuters.com/legal/government/varsity-blues-college-scandal-trial-judge-tests-positive-covid-19-2022-03-23/>.

⁴ *See, e.g.*, CDC, *People with Certain Medical Conditions* (Feb. 25, 2022), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

⁵ *See* CDC, *Travelers with Weakened Immune Systems*, available at <https://wwwnc.cdc.gov/travel/page/weakened-immune-systems> (last visited Mar. 28, 2022).

6. The Colburns live in Palo Alto, California. Dr. Colburn has underlying medical conditions which make it unsafe for him to travel to Boston for sentencing. Those medical conditions are described in the attached declaration.⁶ In addition, the Colburns wish to not incur the expense of airfare and lodging if videoconferencing is readily available, consistent with the General Order.

7. The government takes no position on the requested relief.

WHEREFORE the Colburns respectfully request that the Court ALLOW the instant Motion and authorize them to appear for the upcoming Sentencing Hearing via videoconference.

Dated: April 4, 2022

Respectfully submitted,

/s/ David S. Schumacher

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⁶ Concurrent with this Motion, the Colburns are filing an assented-to motion to seal the declaration.

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Counsel for Defendants Amy Colburn and Gregory Colburn

LOCAL RULE 7.1 CERTIFICATION

I, David S. Schumacher, hereby certify that, on April 4, 2022, I conferred with counsel for the government regarding this Motion. The government takes no position on the requested relief.

/s/ David S. Schumacher
David S. Schumacher
Counsel for Defendants Amy Colburn and Gregory Colburn

CERTIFICATE OF SERVICE

In accordance with Local Rule 5.2(b), I, David S. Schumacher, hereby certify that on April 4, 2022 this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ David S. Schumacher
David S. Schumacher
*Counsel for Defendants Amy Colburn and
Gregory Colburn*